

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE

In the Matter of Financial Independence and
Resource Education, Inc., doing business as
F.I.R.E. International, and Garry D. Smith

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Pre-Hearing Conference before Administrative Law Judge Eric L. Lipman on January 27, 2011, at the Saint Paul offices of the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by, or on behalf of, Financial Independence and Resource Education, Inc., doing business as F.I.R.E. International, or Garry D. Smith (Respondents). Following the receipt of a post-hearing submission on January 27, 2010, the hearing record closed.

STATEMENT OF THE ISSUES

1. Whether the Respondents have performed unregistered debt settlement services in Minnesota in violation of Minn. Stat. § 332B.04, subd. 1 (2010)?
2. Respondents made false, deceptive or misleading statements or omissions about the rates, terms or conditions of a proposed debt settlement services plan, in violation of Minn. Stat. § 332B.11, subd. 1 (2010)?
3. Whether the Respondents have charged excessive fees in violation of Minn. Stat. § 332B.09, subd. 4 (2010)?
4. Whether the Respondents, by engaging in an activity, act or omission prohibited under Minn. Stat. § 332A.14, likewise violated Minn. Stat. § 332B.10(1) (2010)?
5. Whether the Respondents failed to respond to the Department's investigation, in violation of Minn. Stat. § 45.027, subd. 1a (2010).

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On December 2, 2009, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of and Order for Hearing) in this matter was mailed to the Respondents' business addresses in Tequesta, Florida and New York, New York.¹ The Notice of and Order for Hearing indicated that a Prehearing Conference would be held in this matter on January 27, 2011.²

2. The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

....

Pursuant to Minn. Stat. § 45.027, subd. 6 (2010), Respondents may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondents violated any law, rule or order.³

3. No one appeared at the January 27, 2011 conference on behalf of Financial Independence and Resource Education, Inc., doing business as F.I.R.E. International, or Garry D. Smith. No prehearing request was made for a continuance, nor was any communication received by the undersigned from Financial Independence and Resource Education, Inc., doing business as F.I.R.E. International, or Garry D. Smith.

4. The Statement of Charges alleges that:

(a) Respondents Financial Independence and Resource Education, Inc., doing business as F.I.R.E. International ("F.I.R.E."), are not licensed by the Department in any capacity. Respondent Garry D. Smith is the owner and chief executive officer of F.I.R.E.

(b) The Department received a complaint from Minnesota resident C.F. concerning the Respondents' debt settlement services practices in the State of Minnesota. The Department's investigation revealed that a representative of Respondents contacted C.F. in January 2010 and referred C.F. to F.I.R.E.'s debt settlement program. Later that month, the Respondents contacted C.F. and welcomed C.F. to their debt settlement program. Respondents offered to contact all of C.F.'s

¹ See, Affidavit of Jean-Anne Gates (December 6, 2010).

² Notice and Order for Hearing, at 1.

³ Notice and Order for Hearing, at 4, ¶ 1 and 6, ¶ 10.

creditors, negotiate and settle outstanding debts, and provide a faster way to pay off her credit card debts. The Respondents subsequently entered into a written contract with C.F. which overstated the debt amount to be paid as \$9,000, thus reflecting a higher payment schedule for her. C.F. contacted Respondents in February 2010 and informed them that the amount was misstated. Despite C.F.'s efforts, on February 10, 2010, \$703.16 was withdrawn from her bank account due to the incorrect debt amount on the contract.

(c) Respondents misrepresented to C.F. via email on February 12, 2010, that "adjustments will be made." Additionally, on February 22, 2010, the Respondents emailed C.F. and informed her that "customer service is working on it[.]"

(d) On March 10, 2010, \$703.16 was once again withdrawn from C.F.'s bank account due to the incorrect debt amount. C.F. continued to object, and Respondents sent her an email on March 11, 2010, stating "I'm working on it right now. Very sorry and thank you for your patience[.]"

(e) Respondents later tried to obtain C.F.'s new bank account information, which C.F. declined. On April 5, 2010, C.F. faxed a request to Respondents to cancel C.F.'s participation in the program and obtain a full refund. C.F. also did so on May 14, 2010. On June 11, 2010, C.F. received a letter from Respondents advising that "no refund on your account is warranted[.]"

(f) On July 28, 2010, the Department sent a certified letter to the Respondents requesting a response to C.F.'s complaint. Although some documents were sent in response, the response was not a complete response to all of the issues.

5. The allegations contained in the Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, 332B.13.

2. Respondents received notice of the charges against them and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondents are in default as a result of their failure, without the Administrative Law Judge's prior consent, to appear at the scheduled Pre-Hearing Conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the Statement of Charges may be taken as true or deemed proved without further evidence.

6. Based upon the facts set forth in the statement of charges, Respondents engaged in unregistered debt settlement services in Minnesota in violation of Minn. Stat. § 332B.04, subd. 1 (2010).

7. Based upon the facts set forth in the statement of charges, Respondents made false, deceptive or misleading statements or omissions about the rates, terms or conditions of a proposed debt settlement services plan, in violation of Minn. Stat. § 332B.11, subd. 1 (2010).

8. Based upon the facts set forth in the statement of charges, Respondents have charged excessive fees in violation of Minn. Stat. § 332B.09, subd. 4 (2010).

9. Based upon the facts set forth in the statement of charges, Respondents, by engaging in an activity, act or omission prohibited under Minn. Stat. § 332A.14, likewise violated Minn. Stat. § 332B.10(1) (2010)?

10. Based upon the facts set forth in the statement of charges, Respondents failed to respond to the Department's investigation in violation of Minn. Stat. § 45.027, subd. 1a (2008).

11. Minn. Stat. § 45.027 empowers the Commissioner to take disciplinary action against the Respondents, for their violations of agency orders, state statute and state rules.

12. The imposition of a disciplinary action against the Respondents is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that disciplinary action be taken against Financial Independence and Resource Education, Inc., doing business as F.I.R.E. International, or Garry D. Smith.

Dated: February 14, 2011

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digital Recording
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.